3369.

SUPREME COURT OF THE UNITED STATES.

No. 121.

MARY ANN CONNOR, ALIAS MARY ANN VAN NESS, TENANT, &c., PLAINTIFF IN ERROR,

vs.

SAMUEL A. PEUGH'S LESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

INDEX.

	Original.	Print.
Appeal bond, copy of	3	1
Writ of error	5	2
Citation	7	2
Style of court	9	3
Nar	10	3
Judgment vs. Casual ejector	15	5
" " Tenant in possession	16	5
Hab. fa. possessionem	16	6
" " " Alias	18	7
Motion to quash writ, and set aside judgment, and reasons	20	7, 8
Motions overruled	24	9
Appeal prayed and writ of error produced	24	9
Clerk's certificate and seal	24	9

GIDEON, printer.

Copy—Appeal Bond.

Know all men by these presents, that we, Mary A. Van Ness, and Emily A. D. F. Wroe, and A. R. Fowler, are held and firmly bound unto Samuel A. Peugh, lessor of John Doe, in the full and just sum of five hundred dollars, current money, to which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this third day of November, 1855.

Whereas, lately at a Circuit Court of the District of Columbia, held for the county of Washington, in a suit depending in the said circuit court, wherein John Doe, on the demise of Samuel A. Peugh, was plaintiff, and Richard Roe, the casual ejector, was defendant, judgment was rendered against the said defendant: And, whereas, the said Mary A. Van Ness, the tenant in possession, afterwards by her petition filed in said cause, moved the court to set aside said judgment, which motion the court by its judgment overruled; and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel A. Peugh, lessor as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next:

The condition of the above obligation is such, that if the said Mary A. Van Ness do and shall well and truly prosecute her said writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

M. A. W. VAN NESS, [SEAL.]
EMILY A. D. F. WROE, [SEAL.]
A. R. FOWLER, [SEAL.]

Signed, sealed, and del'd in presence of—
GEO. A. MITCHELL,
SAM'L C. WROE,
C. MCNAMEE, as to M. A. W. Van Ness,
T. C. CRAIGEN, as to A. R. Fowler.

I hereby certify that the security to the above bond is amply sufficient.

THOMAS C. DONN, *J. P.*

Approved by the court 7th Nov., 1855.

[REC. CXXI, D. T., 1855.]—1

Writ of Error.

THE UNITED STATES OF AMERICA, *sct.*

The President of the United States, to the Judges of the Circuit Court of the District of Columbia, sitting for the county of Washington:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you or some of you, wherein Samuel A. Peugh, lessor of John Doe, is plaintiff, Richard Roe, the casual ejector, and Mary A. Van Ness, the tenant in possession, are defendants: A manifest error hath happened to the great damage of the said Mary A. Van Ness, as by her complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you *the* send the record and proceedings, and all things concerning the same, to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next, together with this writ, so that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 7th day of November, 1855.

JNO. A. SMITH,
Cl'k Ct. Ct. Wash'n Co., D. C.

Filed 7th November, 1855.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Samuel A. Peugh, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, to answer the appeal of Mary Ann Connor, alias Mary Ann Van Ness, tenant in possession, made in a case lately pending in the circuit court of the District of Columbia, for the county of Washington, wherein John Doe is plaintiff and Richard Roe is defendant; also, in pursuance of a writ of error, filed in the clerk's office of the said circuit court, in the said case, to show cause, if any there be, why judgment rendered against the said tenant in possession should not be corrected, and why full and speedy justice should not be done to the parties in this behalf.

Witness the Hon. James S. Morsell, presiding judge of said circuit court.

JAMES S. MORSELL.

Service acknowledged Nov. 26, 1855.

J. M. CARLISLE, *Att'y for*
S. A. PEUGH.

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the sixteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-ninth.

Were present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlop, associate judges; Jonah D. Hoover, esq., marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, amongst others, are the following, to wit:

Parties.

JOHN DOE, ex. dem. Samuel A. Peugh,
vs.
RICHARD ROE. (Mary A. Connor, alias Van Ness, tenant.)

Be it remembered, that heretofore, to wit, on the 15th day of March, A. D. 1854, John Doe, lessee of Samuel A. Peugh, by J. Mandeville Carlisle, esq., his attorney, declared, in the circuit court of the District of Columbia, for the county of Washington, against Richard Roe, in a plea of trespass and ejectment, with a notice thereto annexed, returnable to the March term of the said court, 1854, to wit, the 27th day thereof; which said declaration is in the words and of the tenor following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington County, sct.

Richard Roe, late of the county aforesaid, was attached to answer unto John Doe, in a plea wherefore, with force and arms, &c., at the county aforesaid, he entered into all that piece and parcel of land and ground situate in the city of Washington, and county aforesaid, and being the certain parcel of ground which is the eastern half part of the lot designated on the official plats of said city, and commonly known as the lot number seven, in the square or reservation marked B, which Samuel A. Peugh had demised to the said John Doe for a term of years, which is not yet expired, and ejected him the said John from the said piece and parcel of land and ground, messuages and tenements, and other wrongs and injuries to him, the said John Doe, then and there did, to the great damage of the said John Doe, and against the peace, dignity, and government of the United States.

And whereupon the said John Doe, by J. Mandeville Carlisle, his attorney, complains, that the said Samuel A. Peugh heretofore, to wit, on the first day of January, in the year 1854, at the county aforesaid, had demised to the said John Doe the said piece or parcel of ground

above mentioned—that is to say, the eastern half of the lot of ground designated on the official plats of said city of Washington, and commonly known as the lot number seven (7), in square or reservation B, with the appurtenances, to have and to hold to him the said John Doe and his assigns, from the said first day of January, in the year 1854, for, during, and until the full end and term of fifty years thence next ensuing, fully to be complete and ended, by virtue of which said demise the said John Doe entered into the said piece and parcel of ground and land, messuages and tenements, with the appurtenances, and was possessed thereof; and being so possessed, the said Richard Roe afterwards, to wit, on the second day of January, in the year 1854, with force and arms, at the county aforesaid, entered into the said parcel of land and ground, messuage and appurtenances, which the said Samuel A. Peugh had demised to the said John Doe, in manner aforesaid, for the term aforesaid, which said term has not yet expired, and ejected the said John Doe from the said demised premises, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States.

Wherefore he says he hath sustained damage to the value of five thousand dollars, and therefore he brings suit, &c., &c.

J. M. CARLISLE,
Att'y p. q.

Notice.

To Mrs. Mary Ann Connor,
(Otherwise called Mrs. Mary A. Van Ness:)

I am informed that you are in possession of a claim title to the premises in this declaration mentioned, or some part thereof: I being sued in this action as casual ejector merely, and having no claim or title to the said premises, or any part thereof, do advise you to appear at the circuit court of the District of Columbia, for the county of Washington, at the March term thereof, in the present year, 1854, by some attorney of the court, and then and there, by rule of the same court, cause yourself to be made defendant in my stead; otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

I am, very respectfully,
Your obt. s'vt.,
RICHARD ROE.

A copy of which declaration and notice was made and sent to the Marshal of the District of Columbia, thereon endorsed, "to be served on the defendant, tenant in possession, 10 days before court."

March term, 1854.

At which mentioned fourth Monday of March, eighteen hundred and fifty-four, and the day of the return of the service of the aforego-

ing declaration in ejectment, comes into the circuit court here the said John Doe, lessee of the said Samuel A. Peugh, by his attorney aforesaid; and the marshal of the District aforesaid, to whom a copy of the said declaration and notice, as aforesaid, was in form aforesaid made and sent, makes return thereof to the court here, in form following, to wit:

Return of Marshal.

"Service, by delivering a copy of the declaration and notice aforesaid to the defendant, Mary Ann Connor, alias Mary Ann Van Ness, on the 15th day of March, 1854.

J. D. HOOVER, *Marshal.*"

Whereupon the said John Doe, lessee as aforesaid, by his attorney aforesaid, prays that the defendant, the tenant in possession of the premises, or those under whom she claims, to his declaration aforesaid may appear and answer; but the said Richard Roe, nor the said Mary Ann Connor, alias Mary Ann Van Ness, nor any other person whatsoever, appears to the declaration aforesaid, according to the said notice, but makes default.

Judg't vs. Cas. Ejector.

Thereupon, the said John Doe, lessee as aforesaid, by his attorney aforesaid, moves the court for judgment against the casual ejector, and for that the court here is not advised to give its judgment of and upon the premises aforesaid; day, therefore, is given until the third Monday of October next, to hear thereof its judgment.

October term, 1854.

And now, to wit, the said third Monday of October, eighteen hundred and fifty-four, to which said day the said cause was continued, for the court to give its judgment of and upon the premises aforesaid, comes again into the circuit court here the said John Doe, lessee as aforesaid, by his attorney aforesaid.

Judg't vs. Casual Ejector, and vs. Tenant in possession.

Whereupon, all and singular the premises being fully considered, and mature deliberation being thereupon had, it is considered by the court here, that the said John Doe, lessee as aforesaid, recover against the said Richard Roe his term aforesaid, yet to come and unexpired, of, in and unto all that piece and parcel of land and ground situate in the city of Washington, and being the eastern half part of lot numbered seven, in square or reservation marked B, according to the plan of the city of Washington, with the appurtenances, and that he have thereof his possession against the said Mary Ann Connor, alias Mary Ann Van Ness.

Test: JNO. A. SMITH, *Cl'k.*

Whereupon, afterwards, to wit, on the 24th day of March, 1855, the said John Doe, lessee as aforesaid, by his attorney aforesaid, prosecuted and sued forth, out of the circuit court here, of and upon the judgment aforesaid, the United States writ of habere facias possessionem, directed to the marshal of the District aforesaid, and returnable the fourth of March next, in form following, to wit:

Hab. fa. pos.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

Whereas, at a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year of our Lord eighteen hundred and fifty-four, a certain John Doe, lessee of a certain Samuel A. Peugh, by judgment of the said court, recovered against a certain Richard Roe, late of the county aforesaid, his term yet to come and unexpired of and in a "certain piece or parcel of ground, situate in the city of Washington and county aforesaid; and, being the certain parcel of ground which is the eastern half part of the lot designated on the official plats of said city, commonly known as the lot numbered seven, in the square or reservation marked B," with the appurtenances, which the said Samuel A. Peugh, on the first day of January, 1854, had demised to the said John Doe, for a term of years which is not yet expired, to hold from thenceforth for and during and unto the full end and term of fifty years thence next ensuing, and fully to be complete and ended.

Therefore, you are hereby commanded, that without delay you cause the said John, lessee of the said Samuel A. Peugh, to have his possession of his term aforesaid, yet to come and unexpired of, in, and to the land and premises aforesaid, with the appurtenances; and in what manner you shall execute this writ, make appear to our said court, to be held at the city of Washington, on the fourth Monday of March instant; and have you then and there this writ.

Witness the Hon. W. Cranch, chief judge of the said court, the 23d day of February, 1855.

Issued the 24th day of March, 1855.

JN. A. SMITH, *Cl'k.*

March term, 1855.

At which mentioned fourth Monday of , eighteen hundred and fifty-five, and the day of the return of the aforegoing writ, comes into the circuit court here the marshal of the District aforesaid, to whom the said writ was in form aforesaid directed, and makes return thereof to the court here, thus endorsed, to wit:

Return of Marshal of Ha. fa.

"Came to hand too late for service.

J. D. HOOVER, *Marshal.*"

Whereupon, afterwards, to wit, on the 23d day of May, 1855, the said John Doe, lessee as aforesaid, by his attorney aforesaid, prosecuted and sued forth out of the circuit court here an alias writ of hab. fa. pos., directed to the marshal of the District aforesaid, and returnable the third Monday of October next, in form following, to wit:

Alias hab. fa. pos.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

Whereas, at a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-four, a certain John Doe, lessee of a certain Samuel A. Peugh, by judgment of the said court, recovered against a certain Richard Roe, late of the county aforesaid, his term yet to come and unexpired of and in a "certain piece or parcel of ground, situate in the city of Washington and county aforesaid; and, being the certain piece of ground which is the eastern half part of the lot designated on the official plats of said city, commonly known as the lot numbered seven, in the square or reservation marked B," with the appurtenances, which the said Samuel A. Peugh, on the 1st day of January, in the year 1854, had demised to the said John Doe, for a term which is not yet expired, to hold from thenceforth for and during, and unto the full end and term of fifty years thence next ensuing, and fully to be complete and ended.

Therefore, you are hereby commanded, that without delay you cause the said John Doe, lessee of the said Samuel A. Peugh, to have his possession of his term aforesaid yet to come and unexpired, of and in the land and premises aforesaid, with the appurtenances; and in what manner you shall execute this writ, make appear to our said court, to be held at the city of Washington, on the third Monday of October next; and have you then and there this writ.

Witness the Hon. W. Cranch, chief judge of the said court, the 18th day of May, 1855.

Issued the 23d day of May, 1855.

JNO. A. SMITH, *Cl'k.*

Mo. to quash Writ and strike out Judg't.

Thereupon, afterwards, and before the return-day of the said writ, to wit, on the 5th day of June, 1855, the said Mary A. Connor, alias Mary A. Van Ness, the tenant in possession, by Robert J. Brent, esq., her attorney, appears in court here, and moves the court to set aside the judgment aforesaid, so as aforesaid rendered, and also to quash the writ of hab. fa. pos. last above issued, and files in court here the following reasons, to wit:

Reasons.

To the honorable the Circuit Court of the District of Columbia for Washington county.

The petition of Mary A. Van Ness respectfully showeth, that she is in possession of the property described in the declaration filed in the case of John Doe vs. Richard Roe, numbered 530, on the imparlance docket of October term, 1854, of this court. That, by the marshal's return in said case, a copy of the declaration was served on your petitioner, on the 15th March, 1854, which was less than ten days, exclusive of Sundays, before the meeting of the March court, to which the said process was returnable.

Your petitioner is advised, that under these circumstances no judgment by default could be entered in said case until March term, 1855, to which time she was entitled to make her appearance; and she charges that the judgment by default rendered at the October term, 1854, of this court, in the aforesaid cause, was illegal and void, and improvidently obtained.

Your petitioner further showeth, that she was ignorant of said process having been served on her, and if the same was ever served, she forgot said service, and she has been unable to recall to her memory the fact of such service. That she has not neglected to make defence to said case, and she bona-fide forgot such service, if it was ever made on her as returned by the marshal, and she can only account for such omission on her part, by some mistake in supposing that the service was in relation to other suits which she had on the docket of this court. That your petitioner is ignorant of, and of the nature of, law-papers, and has not retained, nor can she find the copy of the declaration stated to have been left with her, nor has she any recollection of seeing the same.

Your petitioner further showeth, that she has a just and valid defence to such ejectment suit, and offers herself ready to defend and try said case at any time your honorable court may direct.

Your petitioner further states, that said judgment was obtained irregularly and illegally on this and other grounds, and that the same was obtained by surprise on your petitioner, and ought to be set aside, to admit her defence.

That the marshal has a writ of possession by which he is about to remove your petitioner from the premises. Wherefore, she humbly prays that said judgment may be set aside for irregularity, surprise, and mistake, and that she may be admitted as defendant on the usual terms, and that the writ of possession may also be quashed and set aside with said judgment; and as in duty will ever pray.

ROBERT J. BRENT,
WALTER S. COX.
For Petitioner.

Before the subscriber personally appears Mary A. Van Ness, the above petitioner, on this 2d June, 1855, and made oath on the Holy Evangely

of Almighty God, that the facts are true according to the best of her knowledge and belief.

H. NAYLOR, *J. Peace.*

Whereupon, all and singular the matters and things set forth and contained in the aforegoing petition are continued until the third Monday of October next, because the court here as yet are not advised to give their judgment in the premises.

October term, 1855.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-five, to which said day the matters aforesaid were continued, comes again into court here the said parties, by their attorneys aforesaid.

Motions overruled.

Whereupon, all and singular the premises being seen and heard, and after mature consideration, it is considered by the court here, that the matters and things so as aforesaid set forth and contained in the petition aforesaid, be, and the same is hereby, overruled, and that the said petition be dismissed, which is accordingly done.

Appeal prayed and granted.

Whereupon, the said Mary A. Connor, alias Mary Ann Van Ness, by her attorney aforesaid, prays an appeal from the judgment aforesaid, so as aforesaid rendered, to the Supreme Court of the United States, and the same is granted her.

Writ of Error produced, Certificate, and Seal.

And thereupon, the said Mary A. Connor, alias Mary A. Van Ness, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, for the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is transmitted to said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this day of , 1855.

[L. S.]

JNO. A. SMITH, *Clerk.*